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Honorable Judge Samuel J. Steiner
DATE: November 12th, 2010
TIME: 9:30 a.m.
Chapter 11
LOCATION: Seattle
RESPONSE DUE: Friday, Nov. 5, 2010

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: Adam R. Grossman, Debtor.	CHAPTER 11 BANKRUPTCY CASE NO. 10-19817-SJS DEBTOR-IN-POSSESSION'S OBJECTION TO BORODIN'S MOTION FOR ORDER FOR APPOINTMENT OF CHAPTER 11 TRUSTEE

COMES NOW THE DEBTOR-IN-POSSESSION ("Debtor"), by and through his undersigned attorney, and in response to the Motion for Order for Appointment of Chapter 11 Trustee ("Motion") filed by Jill Borodin ("Borodin"), states the following:

I. Borodin Lacks Standing to Bring this Motion before the Court

Borodin states in her Motion that she is "a creditor herein." (See Borodin's Motion, page 1, line 23). This is false.

Borodin has filed no Claims against the Debtor's estate as of the date of this Objection. (See Claims Register for this case as of November 5, 2010, Attached as Exhibit A). Debtor has not listed Borodin as a creditor in Debtor's schedules. Borodin may, perhaps, *become* a creditor at some future date due to a ruling of the State Court in Debtor & Borodin's divorce proceeding (discussed below), but Borodin's claim to be a creditor now, at the time of the filing if her Motion, is premature and erroneaous. Musso v. Ostashko, 468 F.3d 99, 108, 56 Collier Bankr.Cas.2d 1785, Bankr. L. Rep. P 80,771, (C.A.2 (N.Y.), 2006). Accordingly, as Borodin has no standing to bring this Motion, the Motion should be denied.

II. Appointment of Trustee is Not Warranted;
Borodin Fails to Meet Her Burden of Proof

There is strong presumption that debtor should be permitted to remain in possession. In re Adelphia Communications Corp., 336 B.R. 610, 655 (Bkrtcy.S.D.N.Y., 2006) citing Comm. of Dalkon Shield Claimants v. A.H. Robins Co., Inc., 828 F.2d 239, 241 (4th Cir.1987); Ionosphere, 113 B.R. at 167; In re Evans, 48 B.R. 46, 47 (Bankr.W.D.Tex.1985); In re Eichorn, 5 B.R. 755, 757 (Bankr.D.Mass.1980). Appointment of a trustee is the exception and not the rule in a Chapter 11 case, Matter of Marin Motor Oil, Inc., 689 F.2d 445, 446 (C.A.N.J., 1982) and appointment of a Chapter 11 trustee is an unusual remedy. In re Taub, 427 B.R. 208 (Bankr. E.D. N.Y. 2010). Further, appointment of a trustee in Chapter 11 case is an extraordinary remedy, and one which may impose a substantial financial burden on a hard-pressed debtor seeking relief under the Bankruptcy Code. Matter of Anchorage Boat Sales, Inc., 4 B.R. 635, 644 (Bankr.E.D.N.Y., 1980). The Anchorage Boat Sales court continued that "in many cases, the appointment of a trustee may preclude an effective reorganization because of the substantial administrative expenses which must be paid by the debtor's estate." Id.

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Additionally, the party seeking appointment of a trustee bears the burden of proof, and the need for a trustee must be shown by clear and convincing evidence. In re Adelphia Communications Corp., 336 B.R. 610, 655-656 (Bkrtcy.S.D.N.Y., 2006) citing In re Sharon Steel Corp., 871 F.2d 1217, 1225 (3d Cir.,1989).

It is important to note that the Debtor and Borodin are in the midst of dissolution proceeding in King County Superior Court. The case no. is 09-2-02955-9. This divorce action was filed by Borodin on April 15, 2009. This dissolution proceeding has, to date, involved over 235 individual pleadings. In fact, in the month of October, 2010 alone, there have been forty (40) docketed items, not including discovery requests and production. Further, some pre-trial issues are now before the State Court of Appeals (Trial Court docket line 201, filed on Sept. 28, 2010). This is, to put it mildly, a contentious divorce proceeding.

Borodin states in her Motion that the need to amend various items on Debtor's Schedules and Statement of Financial Affairs was brought to Debtor's attention during the first 341 hearing (See Borodin's Motion, pages 2, line 13 through page 3, line 34). Debtor filed the various Amendments discussed during the first 341 hearing on October 28, 2010. (See docket entries nos. 39, 40, & 41).

Borodin further states in her Motion that Debtor has retained and paid special counsel to represent him in Divorce Court. (See Borodin's Motion, page 3, lines 36-45 through page 4, line 6). Debtor has filed and noted for hearing an Application to Employ Emily Tsai as Debtor's Special Counsel for the Divorce Action Nunc Pro Tunc along with the corresponding Declaration of Emily Tsai. (See docket entries 42 & 43).

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Borodin further states in her Motion that "the Debtor's testimony at the 341 meeting has revealed that his businesses hold significant liquid assets available for the payment of a Chapter 11 trustee." (See Borodin's Motion, page 9, lines 8-15). Again, this is difficult to address as can be clearly seen by simply examining Debtor's Amended Schedule A and Amended Schedule B. (Part of Docket Item 40, Attached as Exhibit B). The overwhelming majority of Debtor's assets are secured pieces of real property and are particularly *not* liquid.

Borodin further states in her Motion that Debtor has "stubbornly refused" to produce his financial affairs [sic] to the bankruptcy court. (See Borodin's Motion, page 4, lines 26-31). This is difficult to address other than to say that the amendments and special counsel fee application requested in the first 341 hearing have all been filed openly and with candor to this court. It is noteworthy that Borodin's bankruptcy counsel failed to attend the second 341 hearing on November 3, 2010 to listen to the apt questions placed by counsel for the United States Trustee and to hear Debtor's detailed answers. Which is in stark contrast to Borodin's theme throughout her Motion that Debtor is 'stubbornly refusing' to produce records of his financial affairs.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order denying the Motion in its entirety with prejudice and award such further and different relief as this Court deems proper and just.

Signature on Following Page

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Respectfully submitted this 5th day of November, 2010.

LAW OFFICE OF MATTHEW D. O'CONNER

By: /s/ Matthew D. O'Conner
Matthew D. O'Conner, WSBA #27061
Attorney for Debtor-in-Possession

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Western District of Washington
Claims Register

10-19817-SJS Adam R Grossman

Judge: Samuel J. Steiner **Chapter:** 11
Office: Seattle **Last Date to file claims:**
Trustee: **Last Date to file (Govt):**

Creditor: (952683338) Discover Bank Dfs Services LLC PO Box 3025 New Albany, OH 43054-3025	**Claim No: 1** *Original Filed* *Date*: 08/25/2010 *Original Entered* *Date*: 08/25/2010	*Status:* *Filed by:* CR *Entered by:* Discover Financial Services, *Modified:*

Unsecured claimed: $6416.20
Total claimed: $6416.20

History:
Details 1-1 08/25/2010 Claim #1 filed by Discover Bank, total amount claimed: $6416.2 (Discover Financial Services)

Description:

Remarks:

Creditor: (952738298) Wells Fargo Bank, N.A. Home Equity Group X2303-01A 1 Home Campus Des Moines, IA 50328-0001	**Claim No: 2** *Original Filed* *Date*: 09/21/2010 *Original Entered* *Date*: 09/21/2010	*Status:* *Filed by:* CR *Entered by:* Wells Fargo Bank NA, *Modified:*

Secured claimed: $87255.10
Total claimed: $87255.10

History:
Details 2-1 09/21/2010 Claim #2 filed by Wells Fargo Bank, N.A., total amount claimed: $87255.1 (Wells Fargo Bank NA)

Description: (2-1) Real Estate

Remarks: (2-1) Secured

Creditor: (952750609) Chase Bank USA, N.A.	**Claim No: 3** *Original Filed*	*Status:* *Filed by:* CR

History:
Details 3-1 09/25/2010 Claim #3 filed by Chase Bank USA, N.A., total amount claimed: $22281.77 (Visa Inc)

Description:

Remarks:

Exhibit A

PO Box 15145 Wilmington, DE 19850-5145	*Date*: 09/25/2010 *Original Entered* *Date*: 09/25/2010	*Entered by:* Visa Inc, *Modified:*

Unsecured	claimed:	$22281.77
Secured	claimed:	$0.00
Priority	claimed:	$0.00
Unknown	claimed:	$0.00
Total	**claimed:**	**$22281.77**

History:
Details 3-1 09/25/2010 Claim #3 filed by Chase Bank USA, N.A., total amount claimed: $22281.77 (Visa Inc)

Description:

Remarks:

Creditor: (952750609) Chase Bank USA, N.A. PO Box 15145 Wilmington, DE 19850-5145	**Claim No: 4** *Original Filed* *Date*: 09/25/2010 *Original Entered* *Date*: 09/25/2010	*Status:* *Filed by:* CR *Entered by:* Visa Inc, *Modified:*

Unsecured	claimed:	$5047.70
Secured	claimed:	$0.00
Priority	claimed:	$0.00
Unknown	claimed:	$0.00
Total	**claimed:**	**$5047.70**

History:
Details 4-1 09/25/2010 Claim #4 filed by Chase Bank USA, N.A., total amount claimed: $5047.7 (Visa Inc)

Description:

Remarks:

Creditor: (952750609) Chase Bank USA, N.A. PO Box 15145 Wilmington, DE 19850-5145	**Claim No: 5** *Original Filed* *Date*: 09/25/2010 *Original Entered* *Date*: 09/25/2010	*Status:* *Filed by:* CR *Entered by:* Visa Inc, *Modified:*

Unsecured	claimed:	$5285.93
Secured	claimed:	$0.00
Priority	claimed:	$0.00
Unknown	claimed:	$0.00

History:
Details 5-1 09/25/2010 Claim #5 filed by Chase Bank USA, N.A., total amount claimed: $5285.93 (Visa Inc)

Description:

Remarks:

Exhibit A

Total	**claimed: $5285.93**

History:
Details 5-1 09/25/2010 Claim #5 filed by Chase Bank USA, N.A., total amount claimed: $5285.93 (Visa Inc)

Description:

Remarks:

Creditor: (952771523) Internal Revenue Service P.O.Box 21126 Philadelphia, PA 19114	**Claim No: 6** *Original Filed Date*: 10/05/2010 *Original Entered Date*: 10/05/2010	*Status:* *Filed by:* CR *Entered by:* Internal Revenue Service, *Modified:*

Unsecured	claimed:	$0.00
Secured	claimed:	$0.00
Priority	claimed:	$5114.30
Total	**claimed:**	**$5114.30**

History:
Details 6-1 10/05/2010 Claim #6 filed by Internal Revenue Service, total amount claimed: $5114.3 (Internal Revenue Service)

Description:

Remarks:

Creditor: (952771523) Internal Revenue Service P.O.Box 21126 Philadelphia, PA 19114	**Claim No: 7** *Original Filed Date*: 10/06/2010 *Original Entered Date*: 10/06/2010	*Status:* *Filed by:* CR *Entered by:* Internal Revenue Service, *Modified:*

Unsecured	claimed:	$0.00
Secured	claimed:	$0.00
Priority	claimed:	$5114.30
Total	**claimed:**	**$5114.30**

History:
Details 7-1 10/06/2010 Claim #7 filed by Internal Revenue Service, total amount claimed: $5114.3 (Internal Revenue Service)

Description:

Remarks:

Creditor: (952780036)	**Claim No: 8**	*Status:*

History:
Secured claimed: $63440.14

Exhibit A

History:		
Details	8-1	10/07/2010 Claim #8 filed by Wells Fargo Bank, N.A., total amount claimed: $63440.14 (Moburg, Mark)
Description:		
Remarks:		

Claims Register Summary

Case Name: Adam R Grossman
Case Number: 10-19817-SJS
Chapter: 11
Date Filed: 08/19/2010
Total Number Of Claims: 8

	Total Amount Claimed	Total Amount Allowed
Unsecured	$39031.60	
Secured	$150695.24	
Priority	$10228.60	
Unknown	$0.00	
Administrative		
Total	**$199955.44**	**$0.00**

PACER Service Center			
Transaction Receipt			
11/05/2010 21:11:10			
PACER Login:	mo0718	**Client Code:**	grossman
Description:	Claims Register	**Search Criteria:**	10-19817-SJS Filed or Entered From: 1/1/1980 Filed or Entered To: 11/5/2010
Billable Pages:	1	**Cost:**	0.08

Exhibit A

B6A (Official Form 6A) (12/07)

In re Grossman, Adam R. Case No. 10-19817 (If known)

AMENDED SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
6821 - 39th Ave. NE Seattle, WA 98115	Fee simple.	C	$605,000	$605,000
1679 Strause Lane Redding, CA 96003	Fee simple.	H	$202,500	$173,758
773 Metro Way Redding, CA 96003	Fee simple.	H	$190,000	$166,000
20710 Glennview Dr. Cottonwood, CA	Fee simple.	H	$259,000	$300,000
		Total of This Page ▶	$1,256,500	
		Total of All Pages ▶	$1,256,500	

(Report also on Summary of Schedules.)

Page 1 of 1

Grossman

MacForms (509) 535-4382

Exhibit B

In re Grossman, Adam R. | Case No. 10-19817 (If known)

Debtor/Codebtor

AMENDED SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		Cash	H	$500
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Chase checking account at 7600 - 35th Ave. NE, Seattle, WA 98115	C	$0
		Wells Fargo checking account 9501 - 35th Ave. NE Seattle, WA 98115	C	$0
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Household goods and furninshings	C	$3,000
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectables.		Books and pictures.	C	$1,000
6. Wearing apparel.		Clothing and shoes.	H	$1,000
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.		S&W .38 revolver (no access by Debtor; stored by 3rd party)	H	$250
		Electronics, routers, switches, used computer drives & external drives (hobby equipmment)		$900

In re Grossman, Adam R. Case No. 10-19817 (If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest (s). 11 U.S.C. § 521(c); Rule 1007(b)).	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		403B with Joint Retirement Board One Penn Plaza, Suite 1515 New York, NY 10119	C	$210,000
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		See attachment for Debtor's interest in LLCs.	C	$0
14. Interests in partnerships or joint ventures. Itemize.		Terrington Davies Tanager Fund LP 4001 Kennett Pike Ste. 134 Greenville, DE 1987 (negative value due to estimated regulatory costs to close business)	C	$500
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			

AMENDED Schedule B Attachment (Question 13)

Description and Location of Property	Husband/Wife/Joint or Community Interest	Current Value
Terrington Davies, LLC 4001 Kennett Pike, Ste. 134 Greenville, DE 1987	Community	($15,000) (negative value)
Ptarmigan Real Estate Fund, LLC 4001 Kennett Pike, Ste. 134 Greenville, DE 1987	Community	$190,000
Terrington Davies Capital Management, LLC 4001 Kennett Pike, Ste. 134 Greenville, DE 1987	Community	$0
Adam R. Grossman & Company, Co 6821 – 39th Ave. NE Seattle, WA 98115	Community	$0

Exhibit B

B6B (Official Form 6B) (12/07) - Cont.

In re Grossman, Adam R.

Case No. 10-19817
(If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.		Trust holding property at 868 - Montcrest Drive, Redding CA 96003. Trust beneficiary is Ptarmigan Real Estate Fund, LLC (Ptarmigan LLC is owned by Debtor & wife)	C	$190,000
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) in customer lists or similar compilations provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2005 Chevrolet Malibu with 29,500 Miles value based on kbb.com ($7,325) (Vehicle in poor condition, damage estimated @ $3,400).	C	$3,925

Exhibit B

In re Grossman, Adam R.

Case No. 10-19817 (If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH-OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.		Office desk, office supplies, computer equipment, and telephones.	H	$2,500
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			

In re Grossman, Adam R.

Case No. 10-19817
(If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
		Total of Continuation Sheet		

_________continuation sheets attached Total ▶ $ 413,575

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

Grossman

Exhibit B